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**AMENDMENT NO. 5 TO THE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MILPITAS AND MEYERS, NAVE,  
RIBACK, SILVER AND WILSON**

This Amendment is entered into this 3<sup>rd</sup> day of August, 2005, by and between the City of Milpitas, a municipal corporation existing under the laws of State of California, hereinafter referred to as "City" and Meyers, Nave, Riback, Silver and Wilson, a California corporation, hereinafter referred to as "Law Firm".

**RECITALS**

WHEREAS, the City and Law Firm entered into a Professional Services Agreement dated July 1, 1997; and

WHEREAS, said agreement was modified on September 19, 1998 to extend the term of said agreement; and

WHEREAS, said agreement was further modified on October 5, 1999, June 21, 2001 and July 3, 2003; and

WHEREAS, the parties desire to further amend said agreement.

NOW, THEREFORE, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. As of January 1, 2006, Section 3(a) is hereby amended in its entirety to read as follows:

"City agrees to pay Law Firm \$165 per hour for all legal services identified in Section 1(a) through (g) which is intended to cover all city attorney and redevelopment agency counsel services except those items identified in Section 1(h). Paralegal hours shall be billed at \$96 per hour. In the event that the hours billed per month exceed 390, the amount payable by City shall not exceed the hourly rate of \$165 per hour multiplied by 390 hours per month. The hourly rates specified in the paragraph shall increase to \$168 per hour for attorneys and \$98 per hour for paralegals effective July 1, 2006. Effective July 1, 2006, the cap on the amount payable per month pursuant to this paragraph shall be equal to 390 hours multiplied by \$168 per hour. The hourly rates specified in the paragraph shall increase to \$171 per hour for attorneys and \$100 per hour for paralegals effective January 1, 2007. Effective January 1, 2007, the cap on the amount payable per month pursuant to this paragraph shall be equal to 390 hours multiplied by \$171 per hour.

For cost recovery matters chargeable to third parties (i.e. development applicants and contracting parties), City agrees to pay Law Firm at the rate of \$203.00 per hour for attorneys and \$96 per hour for paralegals, effective January 1, 2006; \$207 per hour for attorneys and \$98 per hour for paralegals effective July 1, 2006; and \$211 per hour for attorneys and \$100 per hour for paralegals effective January 1, 2007. Defense or prosecution of actions for personal injuries or property damage (ABAG cases) shall be billed at then applicable ABAG rates. All other litigation and labor arbitration or grievances shall be billed at \$170 per hour for associate attorneys, \$210 per hour for shareholders and "Of Counsel" attorneys and \$96 per hour for paralegals. Effective July 1, 2006, the hourly rates for all other litigation and labor arbitration or grievances shall be billed at \$173 per hour for associate attorneys, \$214 per hour for shareholders and "Of Counsel" attorneys and \$98 per hour for paralegals. Effective January 1, 2007, the hourly rates for all other litigation and labor arbitration or grievances shall be billed at \$176 per

hour for associate attorneys, \$218 per hour for shareholders and "Of Counsel" attorneys and \$100 per hour for paralegals. Law firm shall not charge City for travel time and mileage to and from its offices to the City for regular meetings with City Council or staff. Law Firm shall bill the City monthly for fees and costs incurred. Services shall be separately itemized as to time, date and particular service rendered."

2. Except as expressly provided herein, all other terms and conditions of the Professional Services Agreement between the "City" and "MNRSW" shall remain in full force and effect.
3. This amendment shall be effective August 3, 2005.

Date: \_\_\_\_\_

City of Milpitas, A Municipal Corporation  
Of The State of California

By: \_\_\_\_\_  
Jose Esteves, Mayor

Date: \_\_\_\_\_

Meyers, Nave, Riback, Silver & Wilson

By: \_\_\_\_\_  
Steven Mattas, Principal

Approved as to form:

\_\_\_\_\_  
Special Counsel for City of Milpitas